



AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.



Safety In Construction: Coalitions, Advocacy, and Best Practices

December 7, 2017

Nebraska Building Chapter



Quality People.
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Overview

- Recent Rulemakings that Impact Construction
- Impact of the New Administration on Safety
- OSHA's Rulemaking Process
- AGC's Involvement and Impact on Rules
- Contractor Best Practices from the AGC/Willis Towers Watson Construction Safety Excellence Awards

OSHA Rulemakings Impacting Construction

- Occupational Exposure to Crystalline Silica
- Improved Tracking of Workplace Injuries and Illnesses (Electronic Reporting)
- Cranes and Derricks in Construction
 - Amendments
 - Crane Operator Qualification
- Standards Improvement Project (SIP's) IV
- Backing Operations
- Noise in Construction

Occupational Exposure to Crystalline Silica

- Final rule issued on March 25, 2016
- The final rule includes:
 - Permissible exposure limit (PEL) of 50 $\mu\text{g}/\text{m}^3$ (down from 250 $\mu\text{g}/\text{m}^3$) with an action level (AL) of 25 $\mu\text{g}/\text{m}^3$.
 - Specified and Alternative Exposure Control Methods
 - Respirator use when dust control systems or work practices are not sufficient to meet PEL
 - Written exposure control plan implemented by a competent person

Occupational Exposure to Crystalline Silica

- The final rule includes:
 - Housekeeping requirements that prohibit dry brushing or sweeping unless wet sweeping and HEPA vacuuming are infeasible
 - Medical surveillance (chest x-ray, pulmonary function test, TB test, etc.) of workers that wear respirators more than 30 days out of a year.
 - Communication of silica hazards through existing HazCom standard by way of labels and safety data sheets and employee training
 - Maintaining employee air monitoring and medical surveillance records for the duration of employment plus 30 years

Effective Dates

- Employers must comply with all requirements (except methods of sample analysis) by June 23, 2017.
- Compliance with methods of sample analysis by June 23, 2018.

OSHA's Electronic Recordkeeping Final Rule

- Electronic Submission
 - **Employers with 250 or more** (includes part-time, seasonal, and/or temporary workers) in each establishment to electronically submit their **300, 300A, and 301 forms to OSHA annually.**
 - **Employers with more than 20 but less than 250** employees in certain identified industries to electronically **submit their 300A form annually.**
 - Employers who receive notification from OSHA to electronically submit their 300, 300A, and 301 forms to OSHA.
- OSHA will post the data from employer submissions on a publically accessible website – not to include information that could be used to identify individual employees.

Nudging Employers to Compliance

"Our new rule will 'nudge' employers to prevent work injuries to show investors, job seekers, customers and the public they operate safe and well-managed facilities. Access to injury data will also help OSHA better target compliance assistance and enforcement resources, and enable 'big data' researchers to apply their skills to making workplaces safer."

Dr. David Michaels, Assistant Secretary of Labor for Occupational Safety and Health

OSHA's Electronic Recordkeeping Final Rule

- Employers required to develop employee injury and illness reporting requirements – employers **must inform** employees of the following:
 - **Procedures for reporting** work-related injuries and illnesses promptly and accurately.
 - Employees must not be deterred or discouraged from reporting injuries and illnesses.
 - Reasonable reporting procedures are required.
 - **Employees have the right to report** work-related injuries and illnesses.
 - **Employers are prohibited from discharging or in any manner discriminating against employees for reporting** work-related injuries and illnesses.

OSHA's Electronic Recordkeeping Final Rule

- **Considerations regarding reasonableness:**
 - Does the procedure account for work-related injuries that develop over time? Procedures which require immediate reporting without accounting for potential latency periods between the time of exposure and the onset of symptoms are not reasonable.
 - Is the procedure so difficult or complicated that a reasonable employee would be discouraged from reporting? For example, requiring an employee to travel long distances or requiring employees to make reports to multiple layers of management is not reasonable.

OSHA's Electronic Recordkeeping Final Rule

- **Employees have the right to report** work-related injuries and illnesses. OSHA provides two examples of ways employers can meet the requirement to inform employees of this right:
 - Post OSHA poster 3165-04R 2015, or.....
 - At a minimum, provide employees with a written version of this poster excerpt:



“All workers have the right to: Raise a safety or health concern with your employer or OSHA, or report a work-related injury or illness, without being retaliated against.”

OSHA's Electronic Recordkeeping Final Rule

- Final rule allows OSHA to issue citations to employers for retaliating against employees for reporting work-related injuries and illnesses
 - i.e., disciplining employees who report injuries late or disciplining for violations of vague work rules such as "work carefully" or "maintain situational awareness"
- Abatement even if no 11(c) complaint has been filed
 - Reinstatement
 - Back-pay

OSHA's Electronic Recordkeeping Final Rule

- The Rule does not ban appropriate disciplinary programs.
- Employers must ensure that disciplinary measures are applied consistently to all employees – those injured and not injured – to avoid scrutiny.

OSHA's Electronic Recordkeeping Final Rule

- Incentive Programs
 - Be careful that program doesn't incentivize underreporting e.g. bonus for team of employees if no one is injured over defined period of time vs. bonus for employees participating in safety committee.
 - Programs based on lagging as opposed to leading indicators potentially problematic.
 - OSHA indicates determinations will be made on a case-by-case basis.

OSHA's Electronic Recordkeeping Final Rule

- OSHA encourages employers to consider incentive programs that reward for employee participation in safety program activities and evaluations, completion of employee training, safety walkthroughs and identification of hazards, conformance to planned preventive maintenance schedules, and compliance with legitimate workplace safety rules.

Impact of OSHA's Electronic Recordkeeping Rule on Workplace Post-Accident Drug Testing

- OSHA states that **"the final rule prohibit[s] employers from using drug testing (or the threat of drug testing) as a form of adverse action against employees who report injuries or illnesses" and**
- **"Blanket post-injury drug testing policies deter proper reporting."**

Impact of OSHA's Electronic Recordkeeping Rule on Workplace Post-Accident Drug Testing

- In its October 19, 2016 Interpretation of 1904.35(b)(1)(iv), the Agency clarified that:

"OSHA will not issue citations under section 1904.35(b)(1)(iv) for drug testing conducted under a state workers' compensation law or other state or federal law. Drug testing under state or federal law does not violate section 1904.35(b)(1)(iv)."

Impact of OSHA's Electronic Recordkeeping Rule on Workplace Post-Accident Drug Testing

- Example 1: Consider the example of a crane accident that injures several employees working nearby but not the operator. The employer does not know the causes of the accident, but there is a reasonable possibility that it could have been caused by operator error or by mistakes made by other employees responsible for ensuring that the crane was in safe working condition. In this scenario, it would be reasonable to require all employees whose conduct could have contributed to the accident to take a drug test, whether or not they reported an injury or illness.

Impact of OSHA's Electronic Recordkeeping Rule on Workplace Post-Accident Drug Testing

- Example 2: An employee who is injured when he inadvertently drives his forklift into another piece of stationary equipment is drug tested. This **would not** be in violation of section 1904.35(b)(1)(iv) because the employee's conduct was directly tied to the injury, and drug use can impact conduct.

Effective Dates in the Final Rule

December 1, 2016

- Provisions regarding employee injury reporting policies.
- Specifically, requirements to inform employees they have a right to report a work-related injury.
- Prohibition from discharging or otherwise discriminating against employees for reporting work-related injuries or illnesses.

Effective Dates in the Final Rule

January 1, 2017

- Requirements relating to the electronic submission of Part 1904 recordkeeping forms.
- Establishments with ≥ 250 employees must submit information from their 2016 form 300A by July 1, 2017.
- Establishments with ≥ 20 employees but < 250 employees in designated industries must submit information from their 2016 form 300A by July 1, 2017.

January 1, 2018

- Establishments with ≥ 250 employees must submit from all 2017 forms (300A, 300, and 301) by July 1, 2018.
- Establishments with ≥ 20 employees but < 250 employees in designated industries must submit their 2017 form 300A by July 1, 2018.

Beginning in 2019 and every year thereafter

- Information must be submitted annually by March 2.

Cranes and Derricks in Construction

- Amendments:
 - Clarification of Fork Lift Coverage
 - Revising the Existing Definition of “Hoist”
 - Pile Driving Exemption for Anti-two Block and Load Weighing Devices
 - Personnel Baskets
- Operator Qualification
 - Clarify “Type and Capacity” Requirements
 - Include Requirement for Employer Qualification Process

Other OSHA Rulemakings Impacting Construction

- Standards Improvement Project (SIP's) IV
 - 15 of the 18 Proposed Revisions Impact Construction
 - Most Concerning are the Revisions to Trenching and Excavation, PPE, and LOTO Standards
- Backing Operations
 - Focus on Technology Advancements
 - Backup Cameras
 - RFI Technology
- Noise in Construction
 - Developing a Construction Standard that Aligns with General Industry
 - Hierarchy of Controls and Technology

What to Expect from New Administration?

- The Trump Administration has Committed to Rolling Back Regulations:
 - Ask all Department Heads to Submit a List of Wasteful and Unnecessary Regulations that Kill Jobs and Do Not Improve Public Safety.
 - Issue a Temporary Moratorium on New Regulations that are not Compelled by Congress or Public Safety
 - No Specific OSHA Regulations or Standards Mentioned
- Uncertainty Among Career OSHA Staff
- AGC's Engagement with Transition Team
 - AGC Regulatory Inventory
- AGC Advocates for:
 - A Balanced Approach to Safety and Health from the Agency
 - Focus on Collaboration

The OSHA Rulemaking Process

- OSHA Regulations and Standards are Promulgated to Protect Workers from an Identified Safety and Health Safety and Health Hazard
- Must First Identify if there is a National Consensus Standard that Addresses a Particular Hazard (Safety or Health)
- Must Promulgate Standards Pursuant to the OSH Act

The OSHA Rulemaking Process

- Making the Decision: Conducting Preliminary Rulemaking Activities
 - Identify Safety and Health Hazard
 - Conduct research and gather data to determine scope of problem
 - Identify Regulatory and Non-Regulatory Approaches

The OSHA Rulemaking Process

- Developing the Proposed Rule
 - Develop Health Effects Analysis
 - Develop Preliminary Risk Assessment
 - Develop Preliminary Technological Feasibility Analysis
 - Develop Preliminary Economic and Regulatory Flexibility Analysis
 - Draft Proposed Regulatory Text and Preamble
 - Consult with ACCSH if the Rule Affects the Construction Industry
 - Conduct Review Process Required by Small Business Regulatory Enforcement Act (SBREFA)

The OSHA Rulemaking Process

- Publishing the Proposed Rule
 - Obtain Approval to Publish (OMB/OIRA)
 - Plan for Public Hearings
 - Send Proposed Rule to Small Business Administration (SBA)
- Developing and Analyzing the Rulemaking Record
 - Receive Public Comments; Prepare for and Hold Public Hearings
 - Review and Analyze ALL Written Comments, Exhibits, and Testimony
 - Prepare Record Summary and Analysis

The OSHA Rulemaking Process

- Developing the Final Rule
 - Update and Finalize:
 - Health Effects Analysis
 - Risk Assessment
 - Technological Feasibility Analysis
 - Economic and Regulatory Flexibility Analysis
 - Draft Final Regulatory Text and Preamble
 - Obtain All Agency and Departmental Clearances
 - Prepare Rollout Material

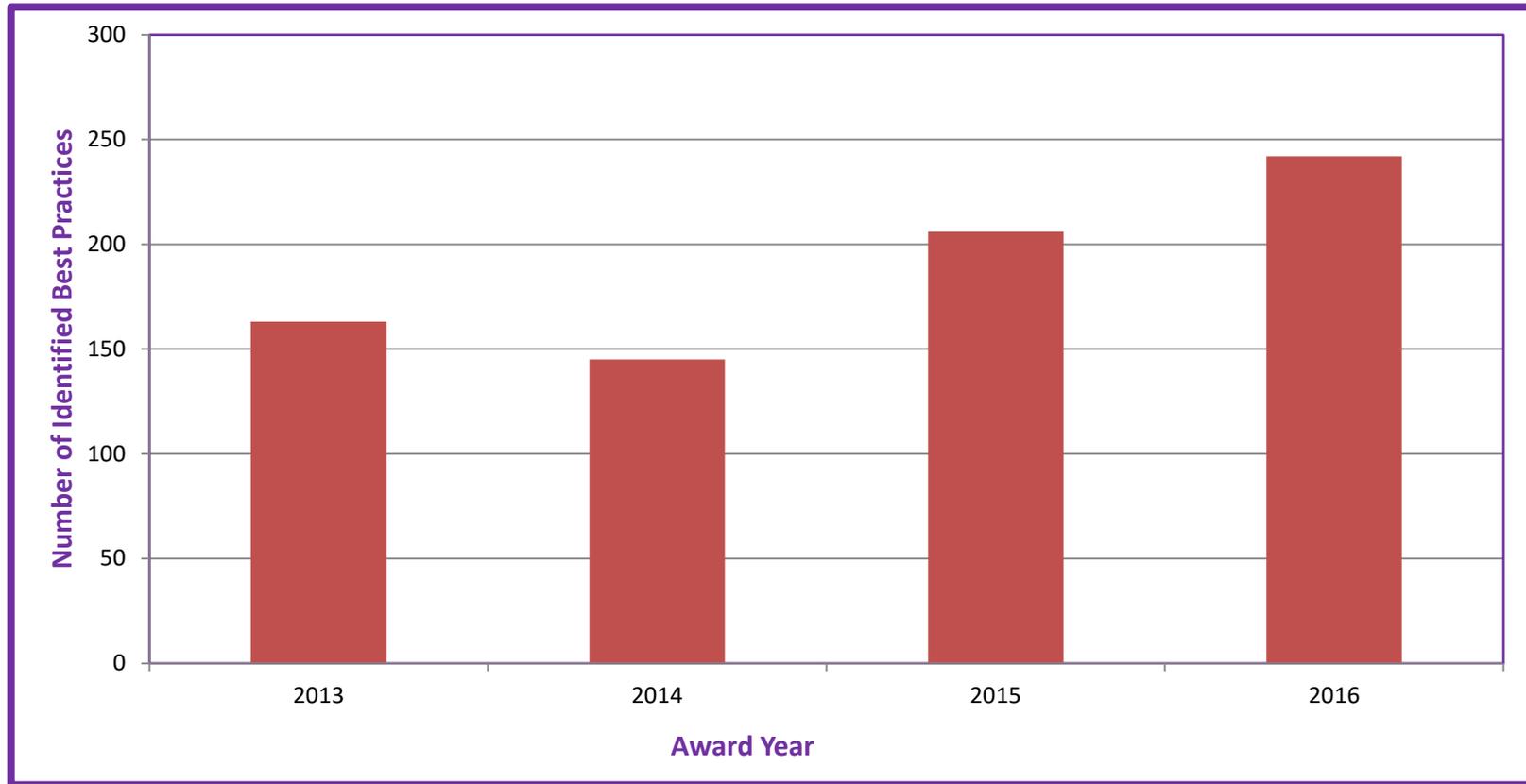
The OSHA Rulemaking Process

- Publishing the Final Rule
 - Obtain Approval to Publish
 - Submit to the Federal Register to Publish
 - Send Final Rule to SBA
 - Submit the Final Rule to Congress and Government Accountability Office
- Post-Promulgation Activities
 - Develop and Publish Small Entity Compliance Guide and other Outreach/Training Material
 - Develop and Publish Compliance Directives and Letters of Interpretation
 - Respond to Legal Action

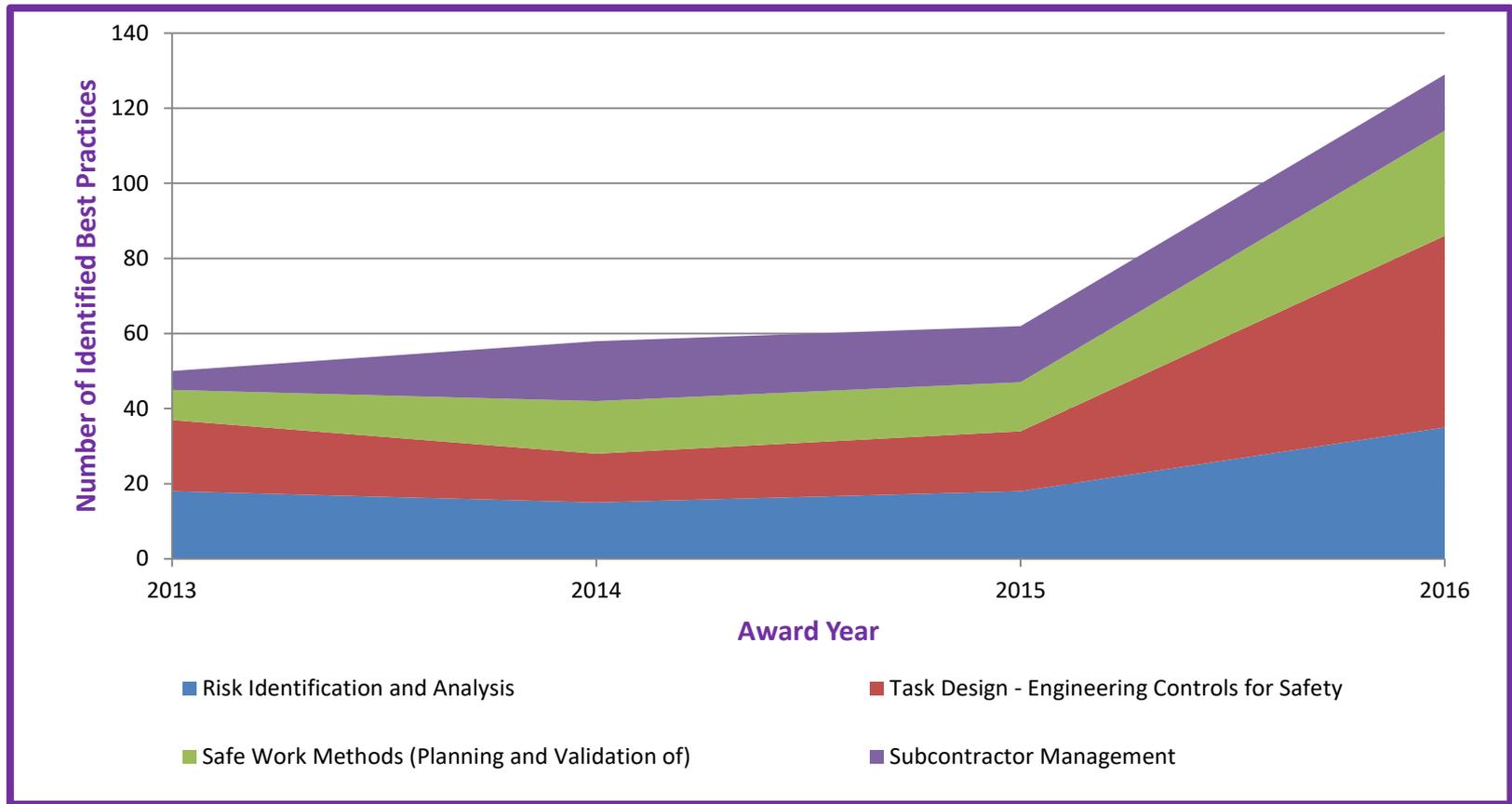
AGC/Willis Towers Watson Construction Safety Excellence Awards

- Recognition of construction companies that excel at safety performance
- Comprehensive process that evaluates:
 - **Management leadership**
 - **Employee participation**
 - **Hazard identification and assessment**
 - **Hazard prevention and control**
 - **Information and training**
 - **Program effectiveness**
 - **Innovation and new technology**
- Participants complete application and submit to local AGC Chapter or AGC Headquarters
- AGC Safety & Health Committee reviews submittals at wintermeeting
- Finalists provide verbal presentation to panel of judges at AGC National Convention

AGC/Willis Towers Watson Construction Safety Excellence Awards



AGC/Willis Towers Watson Construction Safety Excellence Awards



AGC/Willis Towers Watson Construction Safety Excellence Awards

- Senior Management Ownership and Participation
 - Executive management team participation
 - Monthly management conversations with employees
 - Monthly Foreman “Open Forum” safety dinner
 - President sends out monthly direct e-mails to all employees
 - Orientation video by the President
 - Internal monthly 30 minute safety “all call” with CEO
 - Peer system of like contractors conduct cross safety audits

AGC/Willis Towers Watson Construction Safety Excellence Awards

- Risk Identification and Analysis
 - Integrated Process Design techniques in the bid process
 - Formal Post-project “lessons learned” meetings
 - Pre-hire Isokinetic physical evaluations
 - Project planning includes assessment by healthcare professionals
 - 3-D Lift Planning Software for critical lifts: (<http://www.3dliftplan.com>)
 - “Crane Safety Verification Process” for every crane
 - Equipment operators complete a Task Proficiency Evaluation

AGC/Willis Towers Watson Construction Safety Excellence Awards

- Task Design – Engineering Controls for Safety
 - 100% retractable lanyard policy
 - Utilization of “Twist Lock” cord connections for temporary lighting
 - Pre-work infrared images of electrical panels
 - Designed noise reduction enclosure panels
 - “Nothing Hits the Floor” program
 - Materials are delivered on pre-loaded and stackable carts
 - “Ladders as a Last Resort” program
 - Use of BIM technologies to reduce congestion

AGC/Willis Towers Watson Construction Safety Excellence Awards

- Safe Work Methods: Planning and Validation
 - Documented formal tool inspection program
 - Pandemic plan for anything that would disable ability to do work
 - Project Chart shows competent persons, qualifications, and cell phone number
 - “Forward First” vehicle and equipment policy
 - Cooling stations are placed throughout structure
 - Daily worker sign-in on daily pre-task plans

AGC/Willis Towers Watson Construction Safety Excellence Awards

- Worker Engagement, Involvement, and Participation
 - Craft designed Sequence and Scope of Work Tool Box talks
 - Safety Committee selected "Foreman of the Month"
 - Employees are assigned to do a safety talk each day
 - Training sessions cover new Federal safety standards
 - Employee Only Facebook safety page and "Safety Only" email address ex. (Safety@callAGC)
 - Family oriented charity events to support and help the homeless
 - Ongoing one-on-one financial advice for employees
 - Newsletter put in employees paychecks

AGC/Willis Towers Watson Construction Safety Excellence Awards

- Safety Training and Validation of Training
 - Develop rainy day training, targeted safety “workshops.”
 - YouTube Channel for widespread communication and training
 - Language training to field personnel
 - Company safety managers are OSHA 500 authorized trainers
 - Personalized business cards include qualifications/certifications
 - Mid-term exams to test knowledge retention
 - Developed a solo “stretch -n-flex” warm-up routine
 - Extensive orientation program (2 to 3 days)

AGC/Willis Towers Watson Construction Safety Excellence Awards

- Subcontractor Management
 - Subcontractor perception surveys measure GC effectiveness
 - Above and beyond OSHA requirements
 - Mentoring subcontractors to enter CSEA competition
 - Collaboration with temp agencies to provide a training
 - Full-time dedicated Subcontractor Safety Manager
 - Built a database of common subcontractor issues
 - Established “Competent Persons” verification process

AGC/Willis Towers Watson Construction Safety Excellence Awards

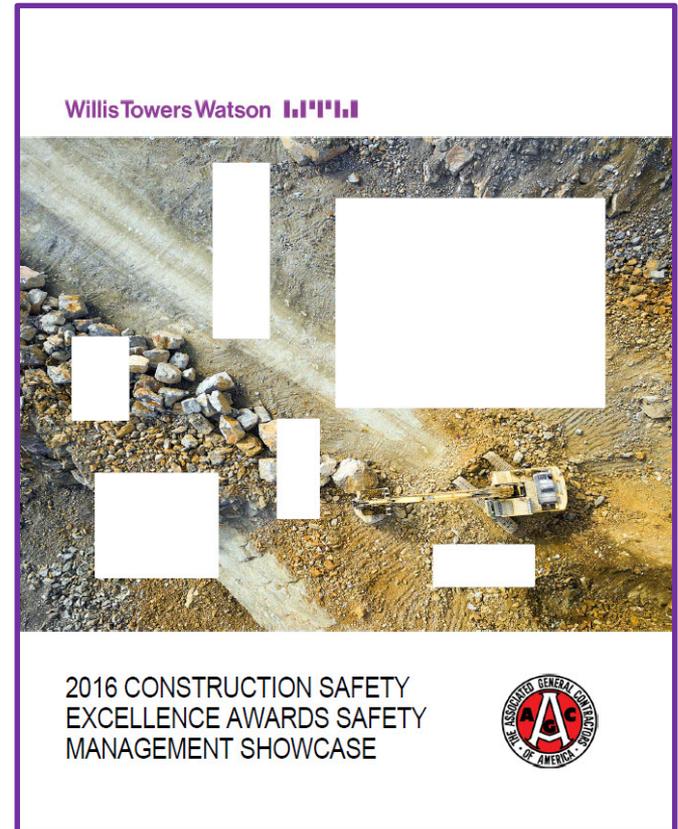
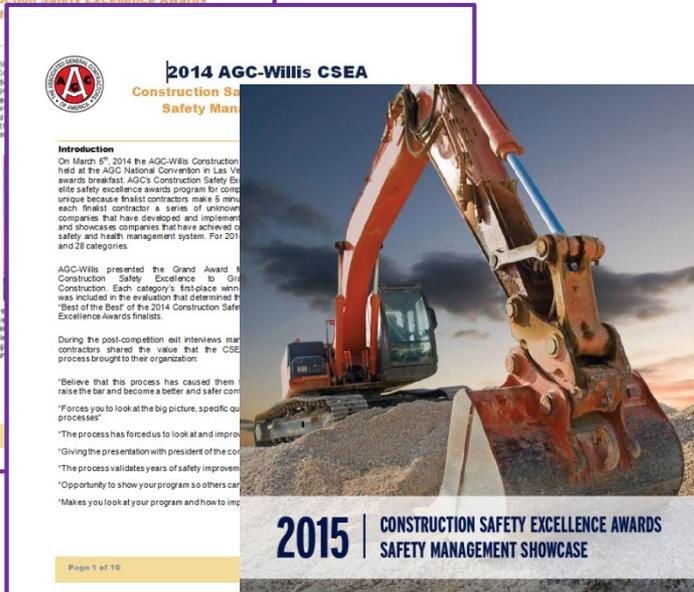
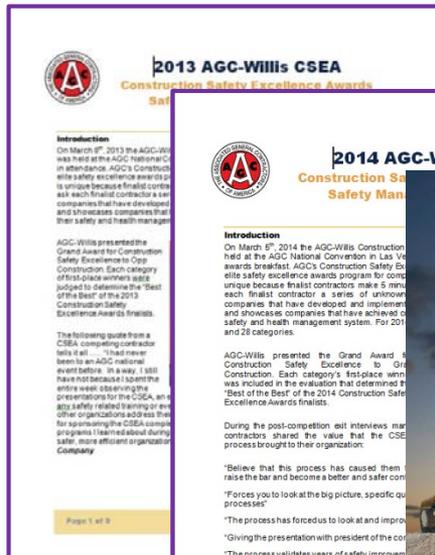
- Emergency and Crisis Management
 - Crisis management program includes Occupational Health issues
 - Simulated project crisis management drills and role plays
 - Laminated poster size pictograms of crisis response actions
 - Crisis management plan includes procedures and drills for Tower Crane operator rescue
 - All site superintendents have an emergency satellite phone
 - All managers attend a crisis management training program
 - Every worker has an In Case of Emergency “ICE” sticker inside of their hardhat

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Safety Management Showcase



Questions?



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